APPEAL NO. 030046
FILED FEBRUARY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was begun on September 30, 2002, and continued with the record closing on December 9, 2002. Resolving the disputed issues before her, the hearing officer decided that venue was proper in the (local office 1); that the respondent's (claimant) compensable injury of _____, extends to and/or includes the tenosynovitis to his right hand/wrist; and that the claimant had disability beginning July 24, 2001, and continuing through the date of the CCH. The hearing officer also determined that neither of the employer's two offers of employment to the claimant were *bona fide* pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 129.6(6) (Rule 129.6(c)). The appellant (carrier) challenged the hearing officer's decision on sufficiency of the evidence grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

We first address the issue of venue. The parties stipulated that on the date of injury, the claimant's residence was within 75 miles of local office 1 of the Texas Workers' Compensation Commission (Commission). The carrier continued to argue, somewhat confusingly, throughout the CCH that the proper venue was the (local office 2) of the Commission because the claimant moved to (State) for a brief time. The carrier cited no authority for its argument and it is not supportable. The statute, in Section 410.005, clearly states that venue is proper and that a hearing must be held at a site not more than 75 miles from the claimant's residence at the time of the injury. As noted, the parties stipulated to the claimant's residence at the time of the injury. The hearing officer did not err in determining that venue was proper at local office 1 of the Commission.

The hearing officer did not err in concluding that the claimant's compensable right hand sprain/strain of _____, extends to and/or includes the tenosynovitis to his right hand/wrist. The medical records, including three examining doctors' opinions, support the hearing officer's finding in this regard. The carrier argued that the claimant injured his right hand resulting in tenosynovitis in 1991, and failed to prove that his _____, injury caused another instance of tenosynovitis. While the parties presented conflicting evidence, the claimant's testimony and the medical evidence support the hearing officer's determination.

The record also supports, and we likewise affirm, the hearing officer's determination that the claimant had disability beginning July 24, 2001, and continuing through the date of the CCH. The standard for a finding of disability is found in Section 401.011(16), which reads:

> "Disability" means the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

The claimant presented testimony that his treating doctor has yet to release him to work, and testified that it is still very difficult to use his right hand (post-surgery) for any purpose, including work. The medical records track with the claimant's testimony in this regard and support the hearing officer's conclusion.

In addition, the hearing officer did not err in determining that the employer's two offers of employment to the claimant were not *bona fide* in compliance with Rule 129.6(c). In her Findings of Fact Nos. 5 and 7, the hearing officer clearly delineates precisely what defects were found in both of the employer's offers, and a review of the documents in evidence confirms the hearing officer's findings. The carrier argues on appeal that the offers were *bona fide*, but does not present evidence to refute the findings of the hearing officer.

Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). Based upon our review of the record, we find no error in the hearing officer's determination.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **FIREMAN'S FUND INSURANCE COMPANY** and the name and address of its registered agent for service of process is

DOROTHY C. LEADERER
1999 BRYAN STREET
DALLAS, TEXAS 75201.

_____
Terri Kay Oliver
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Edward Vilano
Appeals Judge